

Frequently Asked Questions and Additional Information for Separated Staff

What was the process for identifying who would be separated?

This reduction in force (RIF) utilized the CLDF (Competitive Level Documentation Form) process as prescribed by the District of Columbia Municipal Regulations (DCMR). The competitive area for the reduction in force was each individual school, and the competitive level was all staff in the particular type of position to be eliminated. Through this process, all employees in the same competitive area and level were rated on the four factors specified in the DCMR: 1) school needs; 2) relevant, significant contributions and performance; 3) relevant supplemental experience as demonstrated on the job; and 4) length of service (including credit for District residency, veteran's status, prior government service, and a performance evaluation of "outstanding"). Principals were required to provide a narrative justifying their ratings on the first three factors. The DCPS Office of Human Resources calculated the fourth factor. These ratings determined the ranking for purposes of determining who would be separated from employment.

Will my pay and benefits change while I am on administrative leave?

Effective immediately, you are being placed on administrative leave for 30 days. During this period of leave, there will be no change in your pay or benefits prior to your separation date. You are not to report to work during your leave.

How long will I be able to keep my health insurance?

Your regular health insurance benefits will continue, at no additional cost to you, until December 3rd. If you choose to continue your health insurance coverage beyond this date, you may do so through Temporary Continuation of Coverage (TCC) (similar to what in the private sector is known as "COBRA"). You will receive an individual Temporary Continuation of Coverage notice in the mail in approximately 30 days. How much you will pay for TCC will depend on your elections. A Human Resources representative can work with you individually to determine the cost.

How do I get information about my benefits or retirement eligibility?

Because every employee has a unique benefits situation, you should contact the DCPS Employee Services Unit via The Human Services Help Line at (202) 442-4090 to make an appointment to discuss your individual situation and options. The DCPS Retirement Unit is also prepared to assist individuals with calculating their retirement eligibility and can be reached through the number listed above.

You may be eligible to retire in lieu of being separated from service. If you are fifty (50) years old with twenty (20) or more years of service, or if you have twenty-five (25) years of service at any age, you are eligible for the discontinued service retirement annuity (DSRA). Your retirement annuity will be reduced by 2% for each year you are short of age fifty-five (55). If you are eligible for the DSRA, you may submit your completed retirement application to the Office of Human Resources no later than November 2, 2009. If you have any questions regarding retirement, please contact The Human Resources Help Line (202) 442-4090.

Am I entitled to severance pay?

You may be entitled to severance pay based on your years of service with District of Columbia Government. The Office of Human Resources will be sending you additional information about your individual severance calculation in the coming weeks. If you have additional questions or do not receive this information by November 6th, you should call the Human Resources Help Line at (202) 442-4090.

Will I receive a payment for my accumulated leave?

You will be paid for your accumulated but unused annual leave. The District does not pay out accumulated sick leave. You can contact a Human Resources representative to find out more information about how much you should expect to receive.

When will I receive my last paycheck?

You will receive your final regular paycheck on November 20th. Your next few paychecks will cover the following:

October 9 Paycheck –

This check will cover all “Regular Pay” for the time period of 9/13 through 9/26.

October 23 Paycheck –

This check will cover your “Regular Pay” for the time period of 9/27 through 10/3. It will reflect “Administrative Leave Pay” for time period of 10/4 through 10/10.

This check should also contain the payout of any accumulated “Annual Leave” for all eligible 12 month employees and the payout of any “Summer Pay Credit” (SPC) to ET-15 Teachers. If you are due any retroactive pay, this should also be included in this check.

November 6 Paycheck –

This check will contain your “Administrative Leave Pay” for the time period 10/11 through 10/24.

November 20 Paycheck (Final regular pay check from DCPS) –

This check will contain your “Administrative Leave Pay” for the time period of 10/25 – 11/3. If you are eligible for severance, your first severance payment should be included in this check.

Where can I collect my personal belongings that I keep at school?

Your school will be open on Saturday, October 3rd, from 10:00 a.m. to 2:00 p.m. for you to collect any personal belongings that you do not take with you today. If you are not able to come to school on Saturday at the designated time, please contact the Office of School Security at (202) 576-6962 and make arrangements to collect your belongings.

Can I reapply for a position with DCPS?

Yes, you are eligible to apply for any posted position for which you are qualified. Positions are posted regularly at www.dcps.dc.gov (follow the links to Human Resources and then Career Opportunities)

Additional D.C. government job postings can be found at www.dchr.dc.gov. Many additional resources for employment services are available through the D.C. Department of Employment Services (www.does.dc.gov) and their extended network of employer resources at www.dcnetworks.org. Applying for a new position will not change the terms of your separation.

This is not my only job with DCPS. Am I separated from both?

Your separation applies only to the position designated on your separation letter. For example, if you have a second job with DCPS (e.g., afterschool facilitator, coach, or WAE position in an alternative school), you still continue in that position. Any other employment with DCPS may impact severance payments if you are otherwise eligible. You should speak with a Human Resources representative for more information.

Am I eligible for unemployment?

Unemployment compensation is a state level benefit for which you may be eligible. Depending on where you live, you can look to the following for more information:

District of Columbia: The Department of Employment Services provides information for D.C. residents. The website is www.does.dc.gov. If you meet the eligibility criteria, you can apply online at <https://does.dcnetworks.org> or over the phone at (202) 724-7000 or toll free 1 (877) 319-7346. You can also stop by the Franklin Street or Naylor Road One-Stop locations:

Franklin Street One Stop – 1500 Franklin Street NE – 202-576-3091

Naylor Road One Stop – 2626 Naylor Road SE – 202-645-3413

Both are open Monday-Friday, 8:30-4:00 pm.

Maryland: The Division of Unemployment Insurance provides information to Maryland residents. The website is www.dllr.state.md.us/employment/unemployment.shtml. If you meet the eligibility criteria, you can apply online at www.mdunemployment.com or over the phone at (410) 949 - 0022 or toll free at 1(800) 827-4839

Virginia: The Virginia Employment Commission provides information for Virginia residents. The website is www.vaemploy.com. If you meet the eligibility criteria, you can apply online or over the phone at (202) 724-7000 or toll free 1(866) 832-2363.

Whom do I contact if I have other questions?

You should contact DCPS via The Human Resources Help Line at (202) 442-4090. Staff will be available to answer your calls during regular business hours, Monday through Friday from 8:00am to 5:00pm. We will also have staff to answer telephone calls on Saturday, October 3rd, from 9:00 a.m. to 1:00 p.m. and Sunday, October 4th from 12:00pm to 3:00pm.

Other important contact information:

District Department of Employment Services
(202) 724-7000 or www.does.dc.gov

District's Employee Assistance Program Hotline through COPE, Inc.
(800) 247-3054 or www.dc.personaladvantage.com

PREMIUM ASSISTANCE FOR TEMPORARY CONTINUATION OF COVERAGE

The American Recovery and Reinvestment Act (AARA) of 2009, enacted February 17, 2009, provides a new health insurance opportunity for former employees who were or are involuntarily terminated between September 1, 2008 and December 31, 2009. Under this new law, employees may request premium assistance for the TCC coverage. To obtain a copy of the premium assistance application form, please visit the Human Resources section of the DCPS website at www.dcps.dc.gov.

TEMPORARY CONTINUATION OF COVERAGE (TCC) for SEPARATING EMPLOYEES

Your coverage in the District of Columbia Employee's Health Benefits (DCEHB) or Federal Employees Health Benefits Program (FEHB) ends on the last day of the pay period in which you separated from service, followed by a 31 – day temporary extension of coverage (at no cost to you) for conversion to a non-group contract.

You also have the right to temporarily continue your DCEHB or FEHB coverage for up to 18 months after your separation instead of converting to a non-group contract at this time. You may select any plan in the DCEHB or FEHB Program in which to continue your coverage; however, you must pay the full amount of the premium, both employee and government shares, plus a 2 percent administrative charge. If you choose to continue your coverage, enrollment charges begin on the first day following the 31-day period of free coverage. If you continue the coverage to the end of the 18-month period, you will have another 31-day temporary extension of free conversion to a non-group contract.

If you are interested in continuing your DCEHB or FEHB coverage, you may get additional information and a registration form online at www.dcps.dc.gov, by clicking the "Human Resources" link. You may also contact the DCPS Office of Human Resources at 202.442.4090 or you may pick up the enrollment form at the following address between 8:00 A.M – 5:00 P.M, Monday through Friday:

**District of Columbia Public Schools - Office of Human Resources
825 North Capitol Street NE, 6th Floor
Washington, DC 20002**

If you wish to continue your coverage through TCC, your enrollment form must be received, not post-marked, at the address shown above within 30 days after the date of separation. You may also mail or hand-deliver to the address above.

CONVERSION PRIVILEGE FOR GROUP LIFE INSURANCE

If you have elected coverage through the District of Columbia Employees Group Life Insurance Life Insurance (DCCEGLI) or Federal Employees Group Life Insurance (FEGLI) program, your basic life insurance coverage and if applicable, your optional life insurance coverage will terminate on the last day of active service with the District of Columbia Public Schools. You will be granted a 31-day temporary extension of coverage for basic life and option life insurance coverage at no cost to you. The temporary extension does not apply to accidental death and dismemberment coverage.

You have the option to convert your group life insurance coverage into an individual policy. If you wish to exercise your conversion privilege, you have 31 days from your last day of employment, to apply for the conversion of coverage. For additional information and registration forms, visit www.dcps.dc.gov and click on the "Human Resources" link.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

OFFICE OF EMPLOYEE APPEALS



REPLY TO:
717 14TH STREET, N.W.
3rd Floor
WASHINGTON, D.C. 20005
(202) 727-0004
FAX (202) 727-5631

PETITION FOR APPEAL FORM

(Revised 1/00)

INSTRUCTIONS

1. Please follow these instructions carefully. Failure to follow these instructions could result in dismissal of your appeal. You are not required to use this form to file a petition for appeal. However, if you do not use this form, you must include all of the information requested by this form.
2. The types of actions that may be appealed to this Office are found in D.C. Code § 1-606.3(a). Section 1.606.3(a) states that an employee may appeal a final agency decision (1) affecting a performance rating that results in removal of the employee; (2) an adverse action for cause that results in removal, a reduction in grade, or a suspension for 10 days or more; or, (3) a reduction-in-force.
3. If you belong to a union, you might be covered by a collective bargaining agreement that prohibits you from filing an appeal with this Office. Nevertheless, you may file your appeal with this Office if you would like for an administrative judge to determine whether this Office has jurisdiction.
4. This form requires you to provide personal information that is necessary for this Office to process your appeal. Since filing this appeal is a voluntary action, you are not required to provide personal information. However, if you do not provide all information requested, your appeal may be dismissed without further action or review.
5. The written decisions issued by this Office are final administrative decisions. As such, the decisions are available to the public under the Freedom of Information Act. If there is a need to disclose information from your file for any reason, other than as required under the Freedom of Information Act, someone from this Office will contact you and obtain your written consent.
6. If we need to contact you, we will do so by regular mail sent via the United States Post Office. If the correspondence is not returned to this Office, it is presumed received.
7. It is your responsibility to contact this Office if you move or change your telephone number. If you move or change your phone number and you do not let us know how to reach you, your appeal may be dismissed for failing to respond to correspondence from this Office.
8. **YOU MUST FILE TWO COPIES OF THIS FORM: Office of Employee Appeals, 717 14th Street, NW, Third Floor, Washington, D.C., 20005. BE CERTAIN TO SIGN THE FORM.**
9. **NOTE: FAILURE TO COMPLY WITH THIS OFFICE'S RULES AND REGULATIONS SHALL RESULT IN THE DISMISSAL OF YOUR APPEAL.**
10. Additional instructions are included on the attached form. If you have any questions, you may contact the Office of Employee Appeals at 202.727.0004.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

OFFICE OF EMPLOYEE APPEALS



REPLY TO:
717 14TH STREET, N.W.
3rd Floor
WASHINGTON, D.C. 20005
(202) 727-0004
FAX (202) 727-5631

PETITION FOR APPEAL

(PLEASE TYPE, OR PRINT LEGIBLY)

SECTION A: PERSONAL INFORMATION

(This section must be completed.)

THIS BOX FOR OEA USE
ONLY

1. SOCIAL SECURITY NUMBER: _____

2. TITLE: Mr. Ms. Mrs. Miss Dr. (circle one)

3. LAST NAME: _____

4. FIRST NAME: _____

5. STREET ADDRESS: _____

6. APARTMENT NUMBER: _____

7. CITY/STATE/ZIP CODE: _____

8. PHONE NO(S): (Home): (_____) (Work): (_____) _____

DATE OF RECEIPT

POSTMARK DATE

OEA MATTER NUMBER

IMPORTANT NOTICE

Two signed copies of this form must be filed with:

THE OFFICE OF EMPLOYEE APPEALS

717 14TH STREET, NW

THIRD FLOOR

WASHINGTON, DC 20005

You may file this form: (1) via facsimile (202.727.5631); (2) in person, Monday through Friday between the hours of 9:00 am and 5:30 p.m. (except on District Government holidays); or, (3) by mail at the address noted above.

Note that as a general rule, we require two copies of all documents that you file with this Office.

It is your responsibility to keep this Office informed of changes in address or telephone numbers. If you do not receive official notices because this Office does not have your current address, your appeal may be dismissed for failure to respond to the notice.

If you are appealing a RIF, complete sections A, B, D, and E. For appeals of adverse actions, complete sections A, B, C, and D. Be sure to file your appeal within the timeframe stipulated in the notice you received. Attach copies of any correspondence that you received from the Agency pertaining to your appeal.

(Rev. 1/00)

SECTION B: YOUR EMPLOYMENT HISTORY

(This section must be completed.)
(Please type, or print legibly.)

9. A. NAME OF AGENCY: _____
B. ADDRESS OF AGENCY: _____
10. A. WHAT IS YOUR POSITION TITLE: _____
B. HOW LONG HAVE YOU HELD THIS POSITION? _____
11. WHAT IS YOUR GRADE/STEP/SALARY? _____
12. HOW LONG HAVE YOU HAD THIS GRADE/STEP/SALARY? _____
13. HOW LONG HAVE YOU WORKED FOR THE GOVERNMENT?
District Government: _____ Federal Government: _____
14. HOW LONG HAVE YOU WORKED FOR YOUR AGENCY? _____
15. WHAT TYPE OF SERVICE DO YOU HAVE? (circle one)
CAREER EXCEPTED EDUCATIONAL DON'T KNOW
OTHER: _____
16. WHAT TYPE OF APPOINTMENT DO YOU HAVE? (circle one)
PERMANENT TERM TEMPORARY PROBATIONARY
DON'T KNOW OTHER: _____

SECTION C: AGENCY ACTION

(Please type, or print legibly.)

(If you are appealing a reduction-in-force (rif), go to page 5).

17. Briefly describe the action you want to appeal. Why do you think the Agency was wrong in taking this action? You may attach continuation sheets, as well as any relevant documents, memos, letters, forms (etc.).

18. When did the Agency propose taking this action (month, date, year)? _____

19. Did the Agency hold a hearing? ☐ Yes ☐ No If "Yes," when? _____

20. When did you receive written notice of the final decision (month, date, year)? _____
(Attach a copy of the proposed notice, and the final decision letter)

21. What was the effective date of the Agency's action? _____

22. What relief are you seeking, i.e., what do you want this Office to do?

23. At the time of the Agency's action, were you a member of a collective bargaining unit (union)?

☐ Yes ☐ No If "Yes," which unit?: _____

24. At the time of the Agency's action were you serving a probationary or trial period with Agency?

☐ Yes ☐ No

SECTION E: OTHER

This section must be completed for RIF appeals and adverse action appeals.
You must sign this form in the space below.

- A. Have you filed an appeal, grievance, or complaint with your agency or with any other agency concerning this matter?

____ Yes ____ No

If you answered "Yes," when and where did you file?

If you answered "Yes" has a decision been issued? ____ Yes ____ No

If a decision was issued, when was it issued (date)? _____

If a decision was issued, who issued the decision? _____

- B. Have you filed a discrimination complaint or a complaint of unfair labor practice with your agency or any other agency regarding this matter?

____ Yes ____ No

If you answered "Yes," when and where did you file?

If you answered "Yes," has a decision been issued? ____ Yes ____ No

If a decision was issued, when was it issued (date)? _____

If a decision was issued, who issued the decision? _____

HEARING

Your appeal will be assigned to an administrative judge. The administrative judge shall determine whether a hearing is required. If a hearing is not held, the administrative judge will make a decision on the basis of the documents submitted into the record. If a hearing is scheduled, you will be notified of the date, time, and location of the hearing.

EMPLOYEE'S SIGNATURE (DO NOT PRINT)

DATE

SECTION D: REDUCTION-IN-FORCE (RIF)

Complete this page only if you are appealing from a Reduction-In-Force (RIF). Your Agency's personnel office can furnish you with most of the information requested below.

R1. Your Tenure Group: _____

R2. Your Service Computation Date: _____

R3. What was the month/date/year of the RIF notice? _____

R4. What month/date/year was the RIF effective? _____

R5. Were you offered another position? _____ Yes _____ No
If "Yes," did you accept the position? _____ Yes _____ No

R6. If you were offered another position and you accepted the position, please complete the following information:

A. Title of position you were offered: _____

B. Grade and Salary of position you were offered: _____

C. Location of position you were offered: _____

D. Type of Service you were offered: (circle one)

CAREER EXCEPTED EDUCATIONAL

DON'T KNOW OTHER: _____

E. Type of Appointment you were offered: (circle one)

PERMANENT TERM TEMPORARY PROBATIONARY

DON'T KNOW OTHER: _____

R7. Explain why you believe that you should not have been rifed. For example, were you placed in the wrong tenure group? Was an error made in the computation of your service computation date? Was the competitive level too narrow? The foregoing are just examples. Please provide as much information as possible as to why the Agency made a mistake. You may write on the back of this page, attach continuation sheets, as well as any relevant documents, memos, letters, forms (etc.).

EMPLOYEE'S DESIGNATION OF REPRESENTATIVE
(OPTIONAL)

You are not required to designate an attorney, or another individual, to represent you. However, if you choose to have a representative, you must complete this section of the Appeals Form. Your representative will have access to your file and will receive copies of all correspondence.

If you file your Petition for Appeal, and decide to have a representative at a later time, you may do so by completing a copy of this form and filing this form with this Office, as well as the Agency.

If you designate a representative, the Agency has the right to challenge your choice of representative if there is a conflict of interest.

You have the right to change your representative at a later date if you so desire, however, you must promptly notify this Office of any change.

THIS SECTION MUST BE COMPLETED BY EMPLOYEE

I, _____,
(PRINT NAME OF EMPLOYEE) (EMPLOYEE'S SOCIAL SECURITY NUMBER)

hereby designate the undersigned to serve as my representative during the course of this appeal. I understand that my representative is authorized to act on my behalf.

SIGNATURE OF EMPLOYEE

DR1. NAME OF REPRESENTATIVE: _____

DR2. IF REPRESENTED BY A UNION, PRINT NAME OF UNIT: _____

DR3. IF REPRESENTED BY AN ATTORNEY, INCLUDE BAR NUMBER AND
NAME OF BAR ASSOCIATION: _____

DR4. REPRESENTATIVE'S ADDRESS: _____

DR5. REPRESENTATIVE'S AREA CODE AND TELEPHONE NUMBER: _____

DR6. REPRESENTATIVE'S AREA CODE AND FAX NUMBER: _____

SIGNATURE OF REPRESENTATIVE _____

District of Columbia	MAYOR FENTY	DC GUIDE	RESIDENTS	BUSINESS	VISITORS	GOVERNMENT	FOR KIDS
----------------------	-------------	----------	-----------	----------	----------	------------	----------

Office of Employee Appeals

OEA HOME

SERVICES

INFORMATION

Board Members,
Judges and Staff
Governing Statutes
and Jurisdiction
Online Forms
Petitions for Review

ONLINE SERVICE
REQUESTS

Chapter 6 of Title 6, DCMR

Rules and Regulations of the Office of Employee Appeals

600 GENERAL

600.1 The Office of Employee Appeals (Office) is an independent administrative adjudicatory agency created by the District of Columbia Government Comprehensive Merit Personnel Act of 1978, DC Code 1 606.1 et seq. The jurisdiction of the Office is set forth in Rule 604.

[Back](#)

601 ORGANIZATIONAL STRUCTURE

601.1 The Board of the Office (Board) is composed of five (5) members appointed by the Mayor and confirmed by the District of Columbia Council. Three (3) members of the Board shall constitute a quorum for the transaction of official business and the issuance of rules and regulations.

601.2 The Mayor designates a Chairperson of the Board to serve as the Chief Executive of the Office.

601.3 The Mayor designates a Vice Chairperson of the Board. In the absence or disability of the Chairperson, or when the position of Chairperson is vacant, the Vice Chairperson performs the functions vested in the Chairperson.

601.4 The Executive Director is the administrator of the Office and serves as its chief personnel officer.

601.5 The General Counsel, with the assistance of the Deputy General Counsel, provides legal advice to the Board and the Office staff, prepares opinions and orders as directed by the Board, assists in the enforcement of orders pursuant to law, and represents the Office before the Courts.

601.6 Administrative Judges, subject to the provisions of these rules, adjudicate appeals filed before the Office.

[Back](#)

602 SCOPE OF RULES

602.1 These rules govern the procedure for deciding cases filed before the Office. These rules shall be applied to promote justice, fairness, and economy.

602.2 These rules shall apply to all appeals filed on or after their effective date and to all appeals then pending final disposition in the Office.

602.3 The Board may revoke or amend a rule as it applies generally to all cases in accordance with applicable procedures of the District of Columbia Administrative Procedure Act. The Board or an Administrative Judge may waive a rule in an individual case for good cause shown, if application of the rule is not required by statute.

602.4 In the event of a conflict between these rules and a provision of a statute, the statutory provision shall govern. In the event of a conflict between these rules and rules or regulations adopted by another District agency, department, office or board, these rules shall govern.

[Back](#)

603 COMPUTATION OF TIME

603.1 In the computation of time periods which involve business days, the first day counted shall be the next business day following the day the event occurs from which the time period begins to run. In the computation of time periods which involve calendar days, the first day counted shall be the next calendar day following the day the event occurs from which the time period begins to run. For calendar days, if the last day of the time period is a Saturday, Sunday, or legal holiday, the period shall be extended to the end of the next business day.

603.2 If a party has a right or duty to act or proceed within a prescribed period after service of a notice or other document upon him or her, three (3) calendar days shall be added to the prescribed period whenever the document or notice is served upon the party by mail.

[Back](#)

604 JURISDICTION

604.1 Effective October 21, 1998, and except as otherwise provided in the District of Columbia Government Comprehensive Merit Personnel Act of 1978, DC Code 1 601.1 et seq. or Rule 604.2 below, any District of Columbia government employee may appeal a final agency decision affecting:

- a. A performance rating which results in removal of the employee;
- b. An adverse action for cause that results in removal, reduction in grade, or suspension for ten (10) days or more; or
- c. A reduction-in-force.

604.2 An appeal filed pursuant to Rule 604.1 must be filed within thirty (30) days of the effective date of the appealed agency action.

604.3 The Office shall exercise jurisdiction over appeals filed with the Office before October 21, 1998 by an employee appealing a final agency decision that:

- a. Denies his or her appeal of a performance evaluation;
- b. Effects an adverse action against him or her;
- c. Releases him or her through reduction-in-force procedures;
- d. Resolves a grievance;
- e. Refuses to grant a waiver of the District's claim for an erroneous overpayment to an employee;
- f. Denies his or her appeal regarding records management and privacy of records; or

g. Denies his or her classification appeal.

604.4 An appeal filed before October 21, 1998 must have been filed within fifteen (15) business days of the effective date of the appealed agency action.

604.5 Within forty five (45) business days of the date the appeal is filed, an Administrative Judge shall determine whether the Office has jurisdiction to review it.

[Back](#)

605 NOTICE OF APPEAL RIGHTS

605.1 When an agency issues a final decision to an employee on a matter appealable to the Office, the agency shall at the same time provide the employee with:

- a. Notice of the Employee's right to appeal to the Office;
- b. A copy of the rules of the Office;
- c. A copy of the appeal form of the Office;
- d. Notice of applicable rights to appeal under a negotiated review procedure; and
- e. Notice of the right to representation by a lawyer or other representative authorized by the rules.

[Back](#)

606 ARBITRATION

606.1 Apart from any rights under a collective bargaining agreement, the parties may agree to arbitrate a dispute rather than have the Office adjudicate it.

606.2 An agreement to arbitrate must be reached within thirty (30) business days of the date that the employee files a petition for appeal with the Office. If the parties fail to reach an agreement to arbitrate within this period, the Office shall proceed to adjudicate the matter.

606.3 Within ten (10) business days of the date that the parties submit a written agreement to arbitrate their dispute, the Office shall dismiss the appeal and forward the matter to the American Arbitration Association pursuant to DC Code 1 606.7.

[Back](#)

607 MEDIATION AND CONCILIATION PROGRAM

607.1 The Office shall exert every possible effort to resolve matters by mediation and conciliation, to the extent possible, rather than through litigation.

607.2 The Executive Director shall designate a Senior Administrative Judge to implement the mediation and conciliation program of the Office.

607.3 The Senior Administrative Judge responsible for mediation and conciliation shall review the appeals pending in the Office and assign cases where there is a reasonable likelihood of settlement to the mediation and conciliation docket.

607.4 Any party may file a request for mediation and conciliation with the Office which, upon the consent of all parties, shall place the matter on the mediation and conciliation docket.

607.5 The Senior Administrative Judge responsible for mediation and conciliation shall assign the matter to a mediator who shall promptly convene a conference for the purpose of attempting to reach a voluntary resolution of the appeal. The Administrative Judge assigned to an appeal may not serve as mediator on that appeal. A mediator may not be called as a witness in any proceeding concerning matters raised in a case to which he or she is assigned to attempt mediation or conciliation.

607.6 The employee and his or her representative shall attend the conference. A representative of the agency with authority to approve a settlement by the agency shall either attend the conference or be available by telephone at the time set for and throughout the conference. The parties shall engage in good-faith discussion to resolve the matter.

607.7 If the mediator finds that a party has failed to engage in settlement discussions in good faith (including a failure to have available a representative with authority to settle), the mediator shall submit such a finding to the Senior Administrative Judge supervising the mediation and conciliation docket, who may enter such sanctions against the party as may be appropriate to further the objectives of the mediation and conciliation program.

607.8 The discussions at the conference and the offers of the parties shall be confidential and may not be offered or received into evidence or otherwise disclosed in subsequent adjudication or litigation.

607.9 Upon the failure of the parties to reach settlement through mediation and conciliation, the Senior Administrative Judge shall refer the matter to the assigned Administrative Judge for adjudication.

607.10 If the parties reach settlement, the matter shall be dismissed in accordance with DC Code 1-606.6(b).

[Back](#)

608 FILING REQUIREMENTS

608.1 An employee shall initiate an appeal by filing a petition for appeal with the Office.

608.2 The Office shall promptly send a copy of the petition for appeal to the agency, and the agency shall file an answer within thirty (30) calendar days of the service of the petition for appeal.

608.3 The date of filing shall be determined by the date of receipt by the Office.

608.4 Filing of a petition for appeal and a petition for review must be made by personal delivery at the Office between 9:00 am and 4:30 pm,

Monday through Friday, or by mail addressed to the Office.

608.5 The employee must file with the Office one (1) original and two (2) copies of the petition for appeal (including the documents required by Rule 609).

608.6 Filing of pleadings and documents, other than a petition for appeal, or a petition for review filed pursuant to Rule 634, may be made as prescribed in Rule 608.4, or by facsimile transmission during normal business hours.

608.7 The parties shall serve on each other one copy of each document filed with the Office other than the petition for appeal. A party may affect such service by mailing or by personally delivering to each other party a copy of the document submitted to the Office. Each document must be accompanied by a certificate of service specifying how, when, and on whom service was made.

[Back](#)

609 CONTENT OF PETITION FOR APPEAL

609.1 A petition for appeal may be filed on a form approved by the Office.

609.2 A petition for appeal made without use of the form of the Office shall be in writing and contain the following information:

- a. The name of the employee and the name of the agency which took the action;
- b. The type and the effective date of the action taken by the agency;
- c. The name, address, and telephone number of the employee's representative, if any;
- d. The employee's address and telephone number;
- e. A copy of the agency's notice of final decision;
- f. A statement as to whether the employee or anyone acting on his or her behalf has filed an appeal under any negotiated review procedure pursuant to a collective bargaining agreement, or has filed a complaint with any other agency regarding this matter;
- g. The identity of the collective bargaining unit (if any) of which employee is a member; and
- h. The signature of the employee and his or her representative, if any.

609.3 Along with the petition for appeal, the employee shall also submit the following information:

- a. A statement as to whether the employee requests an evidentiary hearing or oral argument;
- b. A concise statement of the facts giving rise to the appeal;
- c. An explanation as to why the employee believes the agency's action was unwarranted; and
- d. A statement of the specific relief the employee is requesting.

609.4 The Office shall not consider the filing of a petition for appeal complete until the employee provides all the information required under Rule 609.2 and 609.3.

609.5 An employee's failure to include a complete address, or to advise the Office of a change in address, shall constitute a waiver of any right to notice and service, and may result in the appeal being dismissed.

609.6 The Administrative Judge may allow an employee to amend the appeal unless the Administrative Judge determines that to do so would prejudice the rights of another party or unduly delay the proceedings.

[Back](#)

610 ANSWER

610.1 An agency's answer in which the allegations of a petition are contested shall contain the following:

- a. The name of the employee and the agency which took the action;
- b. The OEA matter number assigned to the appeal;
- c. A statement of the appealed action the agency took against the employee and the reason(s) therefore;
- d. A specific response to each allegation of the petition admitting, denying, or explaining each in whole or in part. The Administrative Judge may assume that the agency concedes as fact an allegation in employee's petition that the agency does not specifically explain or deny in the answer;
- e. All documents contained in the agency record of the proceeding;
- f. A request for an evidentiary hearing or oral argument, if desired; and
- g. The designation of, and signature by, the authorized agency representative. If the agency fails to designate a representative, the Office shall regard the agency director as the representative.

610.2 If the agency elects not to contest the allegations of fact set forth in the petition, the answer shall consist of a statement that the agency admits all of the material allegations to be true. Such an answer shall constitute a waiver of the right to present evidence or testimony contradicting the admitted facts. However, the right to further participation in the proceedings shall continue and questions of law may be addressed.

610.3 Failure by the agency to file an answer within the time limit set forth in Rule 608.2 shall constitute a default, and the Administrative Judge may, without further notice, render an appropriate decision.

[Back](#)

611 MOTIONS

611.1 Except where the Administrative Judge permits an oral motion hearing, motions shall be written, filed with the Office, and served upon the parties in accordance with Rule 608.7.

611.2 Motions shall state the particular order, ruling, or action requested and the grounds and authority therefore.

611.3 No later than ten (10) calendar days after the service of a motion, or within such time as the Administrative Judge may direct for good cause shown, the opposing party may serve and file an answer to the motion. The moving party shall have no right to reply, except as permitted by the Administrative Judge. No oral argument will be heard on motions unless the Administrative Judge directs otherwise. Written briefs may be filed with motions and with answers thereto.

[Back](#)**612 CONSOLIDATION AND JOINDER**

612.1 If an employee has two or more appeals pending before the Office, the Administrative Judge may consolidate the appeals and adjudicate them as one action.

612.2 If two or more employees have appeals involving similar or identical issues pending before the Office, the Administrative Judge may join the appeals for adjudication as one action.

612.3 The Administrative Judge may consolidate or join appeals on his or her own motion, or on the motion of a party, if to do so would:

- a. Expedite processing of the cases; and
- b. Not adversely affect the interests of the parties.

612.4 At any time and on such terms as are just, the Administrative Judge may sever appeals consolidated or joined under these rules and proceed with each appeal separately.

[Back](#)**613 REPRESENTATION**

613.1 In any proceeding before the Office, the employee may appear on his or her own behalf, through an attorney, through a union representative or through any other competent individual.

613.2 The agency may appear before the Office only through counsel or an individual acting in a representative capacity. If the agency fails to designate a representative, the Office shall regard the agency director as the representative.

613.3 Except where the agency director is the agency representative, no person may participate in a representative capacity before the Office until:

- a. The party submits a signed written statement authorizing such representation; and
- b. The representative submits a signed written statement which contains his or her name, address and telephone number, and which certifies that he or she is available and willing to represent the party's interest.

[Back](#)**614 INTERVENTION**

614.1 Any person or District of Columbia government agency may seek to intervene in an appeal by filing a motion. The motion shall state why the person or agency believes intervention is warranted. After allowing the original parties a reasonable period of time in which to respond, the Administrative Judge may permit the movant to intervene if the movant has an interest that may be affected by the final disposition of the case and the movant's:

- a. Interest will not be represented by the existing parties;
- b. Participation may reasonably be expected to assist in the development of a proper record; and
- c. Participation will not broaden the issues, resulting in prejudicial delay of the proceeding.

614.2 An intervener shall be considered a full party to the proceedings and shall have the same rights and duties as a party, except that the intervener:

- a. Shall not have an independent right to a hearing;
- b. May participate only on the issues affecting them as determined by the Administrative Judge; and
- c. Shall have no right to an award of attorney fees under Rule 635.

[Back](#)**615 SUBSTITUTION**

615.1 If an employee dies while the appeal is pending before the Office, and the interest of the deceased employee has not terminated because of the death, the Administrative Judge, upon motion, may order substitution of the proper parties. A motion for substitution shall be made within ninety (90) calendar days after the death of the employee.

615.2 If an employee becomes incompetent by reason of mental or physical infirmity, the Administrative Judge, upon motion, may allow the appeal to be continued by the employee's representative.

615.3 When an agency's interest in the appeal is transferred to another District agency, the Administrative Judge may:

- a. Allow the appeal to continue against the original agency;
- b. Order the substitution of the successor agency; or
- c. Join the successor agency with the original agency.

[Back](#)**616 SUMMARY DISPOSITION**

616.1 If, upon examination of the record in an appeal, it appears to the Administrative Judge that there are no material and genuine issues of fact, that a party is entitled to a decision as a matter of law, or that the appeal fails to state a claim upon which relief can be granted, the Administrative Judge may, after notifying the parties and giving them an opportunity to submit additional evidence or legal argument, render a summary disposition of the matter without further proceedings.

616.2 An Administrative Judge may render a summary disposition either sua sponte, after notice under Rule 616.1, or upon motion of a party.

616.3 An order granting summary disposition shall conform to the requirements for initial decisions set forth in Rule 632.

[Back](#)**617 INTERLOCUTORY APPEALS**

617.1 An interlocutory appeal is an appeal to the Board of a ruling made by an Administrative Judge during the course of a proceeding. The Administrative Judge may permit this appeal if he or she determines that the issue presented is of such importance to the proceeding that it requires immediate consideration by the Board. The Board shall make a decision on the issue and the Administrative Judge shall proceed in accordance with that decision.

617.2 A party seeking review by interlocutory appeal must file a motion for certification within five (5) business days of service of the Administrative Judge's determination. The motion shall include arguments in support of both the certification and the determination to be made by the Board.

617.3 The Administrative Judge shall grant or deny a motion for certification. If certification is granted, the record shall be referred to the Board.

617.4 At the discretion of the Administrative Judge, the proceeding may be stayed during the time an interlocutory appeal is pending. The Board may stay a proceeding during the time an interlocutory appeal is pending.

[Back](#)**618 DISCOVERY**

618.1 Parties may obtain discovery by one (1) or more of the following methods:

- a. Depositions upon oral examination or written questions;
- b. Written interrogatories;
- c. Requests for production of documents or things for inspection and other purposes; and
- d. Requests for admission.

618.2 Unless the Administrative Judge orders otherwise, these methods may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

618.3 Unless the Administrative Judge directs otherwise, the parties may obtain discovery regarding any matter not privileged which is relevant to the subject matter involved in the pending appeal. Such information may include the existence, description, nature, custody, condition and location of books, documents, or other tangible things and the identity and location of persons having any knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at an evidentiary hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

618.4 The Administrative Judge may limit the frequency or use of discovery if:

- a. The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
- b. The party seeking discovery has had ample opportunity by discovery in the appeal to obtain the information sought; or
- c. The discovery is unduly burdensome or expensive, in light of the nature of the case, the relief sought, the limitations on the parties' resources, and the importance of the issues involved in the case.

618.5 The Administrative Judge may deny discovery or make any order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent undue delay in the proceeding.

618.6 Discovery may be commenced after the Office notifies the agency that the employee has filed the petition. Unless the Administrative Judge directs otherwise, discovery shall be completed by the date of the pre hearing conference.

618.7 Discovery matters before the Office are intended to be of a simplified nature. Discovery procedures shall be established by the Administrative Judge as appropriate under the circumstances. Further guidance, however, may be obtained by referring to the District of Columbia Superior Court Rules of Civil Procedure. Such rules should be interpreted as instructive rather than controlling.

[Back](#)**619 SUBPOENAS**

619.1 Application for issuance of a subpoena requiring a person to appear and testify at a specific place and time shall be made in writing to the Administrative Judge. All requests for subpoenas ad testificandum shall clearly identify the person subpoenaed and his or her address and shall be supported by a showing of the relevance and materiality of the testimony sought.

619.2 Application for issuance of a subpoena requiring a person to produce documents (including writings, drawings, graphs, charts, photographs, phone records and other recordings, and other data compilations from which information can be obtained) at a specific time and place shall be made in writing to the Administrative Judge. All requests for subpoenas duces tecum shall specify with reasonable particularity the information sought, the facts expected to be established thereby, and how these facts are relevant and material.

619.3 An applicant for a subpoena shall arrange for service; except for good cause shown, service shall be completed no later than 10 calendar days before the date of the requested testimony or production.

619.4 Personal service of a subpoena may be made by any person, not a party, who is at least eighteen (18) years of age. Service of the subpoena shall be attested to in an affidavit by the person making such service. The attesting affidavit shall state the date, time, and method of service.

619.5 Any motion by the subject of a subpoena to limit or quash the subpoena shall be filed within three (3) calendar days of the time for compliance therewith. Such motions shall set forth all assertions of privilege or other factual and legal objections to the subpoena, including all appropriate arguments, affidavits, and other supporting documentation.

619.6 In the case of contumacy or failure to obey a subpoena issued, the Office, pursuant to DC Code 1 606.2(a)(4), may request enforcement of the subpoena in the Superior Court of the District of Columbia.

[Back](#)

*

620 ADMINISTRATIVE JUDGES

620.1 Proceedings shall be presided over by an Administrative Judge appointed by the Office.

620.2 Administrative Judges shall conduct hearing fairly and impartially, take all necessary action to avoid delay in the disposition of proceedings, and maintain order. They shall have all powers necessary to that end including, but not limited to, the power to:

- a. Administer oaths and affirmations;
- b. Issue subpoenas and protective orders;
- c. Rule upon motions;
- d. Compel discovery;
- e. Regulate the course of the proceeding, require an evidentiary hearing, if appropriate, fix the time and place of such evidentiary hearing, and exclude persons from such evidentiary hearings for contumacious conduct;
- f. Call and examine witnesses and admit to the record documentary or other evidence;
- g. Dismiss cases based on a settlement agreement reached by the parties; and
- h. Take other appropriate action authorized by statute, these rules, or the Board.

620.3 If a new Administrative Judge is substituted for the one originally assigned, a motion predicated upon such substitution shall be made no later than seven (7) calendar days after the Office notifies the parties of the reassignment. Failure to make such motion within this time period shall constitute a waiver of the right to object to the substitution.

[Back](#)

621 DISQUALIFICATION OF ADMINISTRATIVE JUDGE

621.1 If an Administrative Judge deems himself or herself disqualified to preside in a particular case, he or she shall withdraw by notice, on the record, and shall notify the Executive Director of such withdrawal.

621.2 At any time following the assignment of the appeal to an Administrative Judge, and before issuance of an initial decision in the matter under Rule 632, a party may request the Administrative Judge to disqualify himself or herself on the grounds of personal bias or other disqualification, by serving and filing a motion promptly upon the discovery of the alleged facts, with an affidavit setting forth, in detail, the matters alleged to constitute grounds for disqualification.

621.3 If, in the opinion of the Administrative Judge, the affidavit is sufficient on its face, the Administrative Judge shall disqualify and remove himself or herself from the case. If the Administrative Judge does not disqualify himself or herself, the Administrative Judge shall issue a written order to that effect stating the grounds for the ruling.

[Back](#)

622 SANCTIONS

622.1 The Administrative Judge may impose sanctions upon the parties as necessary to serve the ends of justice, including, but not limited to, the instances set forth in this section.

622.2 If a party fails to comply with an order for taking a deposition, the production of evidence within the party's control, a request for admission, and/or production of witnesses, the Administrative Judge may, for example:

- a. Draw an inference adverse to the party who failed to comply;
- b. Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon evidence relating to, the information sought;
- c. Permit any party who has been prejudiced by the non-compliance to introduce secondary evidence concerning the information sought; and
- d. Strike any part of the pleadings or other submissions of the party failing to comply with such order.

622.3 If a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant. Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure to:

- a. Appear at a scheduled proceeding after receiving notice;
- b. Submit required documents after being provided with a deadline for such submission; or
- c. Inform this Office of a change of address which results in correspondence being returned.

622.4 The Administrative Judge may refuse to consider any motion or other action which is not filed in a timely fashion.

[Back](#)

623 EX PARTE COMMUNICATIONS

623.1 Ex parte communication is oral or written communication to decision-making personnel of the Office from a party to a proceeding who does not provide the other party or parties an opportunity to participate.

623.2 An ex parte communication which involves the merits of the case is prohibited.

623.3 In the event of a prohibited communication, the Administrative Judge shall describe that occurrence on the record with notice to the parties either by filing therein a memorandum, if the transaction was oral, or by filing any writing delivered to him or her.

623.4 When an Administrative Judge determines that a party has initiated a prohibited ex parte communication, the Administrative Judge may impose such sanctions or remedial relief as may be appropriate under the circumstances.

[Back](#)

624 PRE HEARING CONFERENCES

624.1 The Administrative Judge may convene a pre-hearing conference to consider:

- a. Simplification, clarification, compromise, or settlement of the issues;
- b. Necessity and desirability of amendments to the pleadings;
- c. Stipulations, admissions of fact, and the contents, admissibility, and authenticity of documents;
- d. Whether the Administrative Judge will order an evidentiary hearing to expedite the presentation of evidence, including, but not limited to, restricting the number of witnesses;
- e. A statement of the issues; and
- f. Such other matters as may aid in the orderly disposition of the proceeding, including disclosure of the names of witnesses and furnishing, for inspection or copying, non-privileged documents, papers, books, or other physical exhibits, which constitute or contain evidence relevant to the subject matter involved and which are in the possession, custody, or control of any party to the proceeding.

624.2 A pre hearing conference, in the discretion of the Administrative Judge, may be recorded verbatim.

624.3 After such pre-hearing conference, the Administrative Judge may issue an order that identifies the legal and factual issues in the appeal. Unless modified, such order shall control the subsequent course of the proceeding.

624.4 Failure to appear at the pre hearing conference without good cause and after adequate notice shall constitute, in addition to grounds for sanctions, a waiver by that party of any right to object to the characterization of the issues as set forth in the post pre hearing order.

[Back](#)

625 EVIDENTIARY HEARINGS

625.1 A party may request the opportunity for an evidentiary hearing to adduce testimony to support or refute any fact alleged in a pleading.

625.2 If the Administrative Judge grants a request for an evidentiary hearing, or makes his or her own determination that one is necessary, the Administrative Judge will so advise the parties and, with appropriate notice, designate the time and place for such hearing and the issues to be addressed. The Administrative Judge shall give due regard to the availability of the parties or their authorized representative(s) in designating the time and place of the evidentiary hearing.

625.3 Postponement of an evidentiary hearing will be allowed only upon good cause shown or upon agreement of the parties, with the concurrence of the Administrative Judge. Except in extraordinary circumstances, a motion for a postponement shall not be considered unless it is served and filed at least seven (7) calendar days in advance of the date designated for the evidentiary hearing.

625.4 Failure of a party to appear for an evidentiary hearing, unless excused by the Administrative Judge for good cause shown, before or after the fact, may be deemed to be a waiver by that party of all rights to participate further in the proceeding, and may be grounds for dismissal of the case or the imposition of other sanctions.

625.5 Hearings shall be open to the public, except that the Administrative Judge may order a hearing or any part thereof closed, where a closed hearing would be in the best interest of the employee, a witness, the public, or other affected persons.

[Back](#)

626 RECORDING AND TRANSCRIPTS

626.1 Evidentiary hearings shall be recorded verbatim under the supervision of the Administrative Judge and shall be the sole official record of the proceeding.

626.2 A transcript or, if the record was not transcribed, a copy of the recording may be obtained by the parties upon request.

626.3 The Office will provide one (1) copy of the transcript or recording to each party or, if the party is represented, to the representative at no cost. Any additional copies of the record shall be at the expense of the requesting party.

626.4 A party may request correction to the official transcript by written motion. A motion for correction shall be submitted within ten (10) calendar days of receipt of the transcript.

[Back](#)

627 PRESENTATION OF EVIDENCE OR WITNESSES

627.1 All material and relevant evidence or testimony shall be admissible, but may be excluded if it is unduly repetitious.

627.2 During an evidentiary hearing, a party shall be entitled to present his or her case or defense by oral, documentary or physical evidence, and to conduct reasonable cross examination.

627.3 Objections to the admission of evidence, or to the conduct of the proceeding, may be made orally on the record where an evidentiary hearing has been provided, or by written motion. Argument thereon, or briefs or legal memoranda, if requested by the Administrative Judge, shall be included in the record. Rulings on objections shall be made at the time of the objection or prior to the receipt of further evidence, unless the Administrative Judge orders otherwise, and shall be a part of the record.

627.4 The parties may agree upon any facts or procedures relevant to the proceeding. Such stipulations shall be binding on the parties.

627.5 The Administrative Judge on his or her own motion or on motion of a party, may take official notice of matters of common knowledge or matters that can be verified. Official notice taken of any fact shall satisfy a party's burden of proving the fact noticed.

627.6 All exhibits offered into evidence shall be numbered and marked so as to identify the party offering the exhibit.

627.7 Whenever evidence is excluded by the Administrative Judge, the offering party may make an offer of proof of what the party expects the evidence to establish. In the case of an evidentiary hearing, if the offer of proof consists of an oral statement, it shall be included in the record. If the offer of proof consists of an exhibit or other documentary evidence, it shall be marked for identification and retained in the record so as to be available for consideration by any reviewing authority.

[Back](#)

628 WITNESSES

628.1 Every person shall be competent to be a witness as to any material matter unless the Administrative Judge finds that the proposed witness is incapable of:

- a. Expressing himself or herself concerning the matter so as to be understood by the Administrative Judge either directly or through interpretation by one who can understand the witness; or
- b. Understanding the duty of a witness to tell the truth.

628.2 Each District of Columbia government agency shall make its employees available to furnish sworn statements or affirmation or to appear as witnesses at depositions and hearings when requested by the Administrative Judge. When providing such statements or testimony, witnesses shall be on official duty status.

628.3 Witnesses not employed by the District of Columbia government may be required to appear by subpoena at the cost of the moving party.

628.4 Witnesses shall have the right to representation when testifying.

[Back](#)

629 BURDEN OF PROOF

629.1 The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. Preponderance of the evidence shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

629.2 The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.

629.3 For appeals filed on or after October 21, 1998, the agency shall have the burden of proof, except for issues of jurisdiction.

629.4 For appeals filed before October 21, 1998, the agency, except for issues of jurisdiction, shall have the burden of proof in appeals filed pursuant to DC Code 1-617.1 (1992 repl.) and the employee shall have the burden of proof in all other appeals.

[Back](#)

630 CLOSING THE RECORD

630.1 When an evidentiary hearing has been provided, the record shall be closed at the conclusion of the hearing, unless the Administrative Judge directs otherwise. When no evidentiary hearing has been provided, the record shall be closed on the date set by the Administrative Judge as the final date for the receipt of submissions from the parties.

630.2 Once the record is closed, no additional evidence or argument shall be accepted into the record unless the Administrative Judge reopens the record pursuant to Rule 631.

[Back](#)

631 REOPENING THE RECORD; TERMINATION OF JURISDICTION

631.1 The Administrative Judge may reopen the record to receive further evidence or argument at any time prior to the issuance of the initial decision.

631.2 The jurisdiction of an Administrative Judge terminates upon issuance of the initial decision. However, the Administrative Judge shall retain jurisdiction over the appeal to the limited extent necessary to correct the record or transcript, rule on a request by the employee for attorney fees, and process any petition for enforcement.

[Back](#)

632 INITIAL DECISION

632.1 The Administrative Judge shall issue an initial decision. Such decision shall be issued no later than 120 business days after the employee files a complete petition for appeal. However, the Administrative Judge may extend this period for a reasonable time under extraordinary circumstances.

632.2 The Administrative Judge may, at the conclusion of an evidentiary hearing, render an oral decision, in which case an initial decision in writing shall be issued within thirty (30) days.

632.3 Each initial decision shall contain:

- a. Findings of fact and conclusions of law, as well as the reasons or bases therefore, upon all the material issues of fact and law presented on the record;
- b. An order as to the final disposition of the case, including appropriate relief if granted;
- c. The date upon which the decision will become final; and
- d. A statement of the right to seek further administrative remedy, including the right to petition for review.

632.4 Notwithstanding any other provision of these rules, the Office shall not reverse an agency's action for error in the application of its rules, regulations, or policies if the agency can demonstrate that the error was harmless. Harmless error shall mean:

Error in the application of the agency's procedures, which did not cause substantial harm or prejudice to the employee's rights and did not significantly affect the agency's final decision to take the action.

632.5 The Office shall serve a copy of the initial decision on each party to the proceeding.

[Back](#)

633 FINALITY OF DECISION

633.1 The initial decision shall become final thirty five (35) calendar days after issuance.

633.2 The initial decision shall not become final if any party files a petition for review or if the Board reopens the case on its own motion within thirty five (35) calendar days after issuance of the initial decision.

633.3 If the Board denies all petitions for review, the initial decision shall become final five (5) business days after issuance of the last denial.

633.4 If the Board grants a petition for review or reopens a case, the subsequent decision of the Board shall be the final decision.

633.5 Administrative remedies shall be considered exhausted when a decision becomes final in accordance with this section.

[Back](#)

634 PETITIONS FOR REVIEW

634.1 Any party to the proceeding may serve and file a petition for review of an initial decision with the Board within thirty five (35) calendar days of issuance of the initial decision.

634.2 Within thirty five (35) calendar days after the filing of the petition for review, any party may file an answer.

634.3 The petition for review shall set forth objections to the initial decision supported by reference to the record. The Board may grant a petition for review when the petition establishes that:

- a. New and material evidence is available that, despite due diligence, was not available when the record closed;
- b. The decision of the Administrative Judge is based on an erroneous interpretation of statute, regulation or policy;
- c. The findings of the Administrative Judge are not based on substantial evidence; or
- d. The initial decision did not address all material issues of law and fact properly raised in the appeal.

634.4 Any objections or legal arguments which could have been raised before the Administrative Judge, but were not, may be considered waived by the Board.

634.5 The Board may review an initial decision on its own motion within thirty-five (35) days of issuance of the initial decision.

634.6 The Board may order oral argument on its own motion or on motion filed by any party.

634.7 The Board may affirm, reverse, remand, modify or vacate the initial decision, in whole or in part. Where appropriate, the Board shall issue a final decision and order a date for compliance.

634.8 The Board's decision on whether to grant or deny a petition for review shall be by public vote. However, the Board's final decision shall be the written opinion and order.

634.9 An employee or agency may appeal a final decision in accordance with the District of Columbia Government Comprehensive Merit Personnel Act of 1978, DC Code 1-601.1 et seq.

[Back](#)

635 ATTORNEY FEES

635.1 An employee shall be entitled to an award of reasonable attorney fees if:

- a. He or she is a prevailing party; and
- b. The award is warranted in the interest of justice.

635.2 Unless the Administrative Judge directs otherwise, a request for attorney fees shall be made by written motion within thirty (30) calendar days of the date that the initial decision becomes final.

635.3 An employee shall submit reasonable evidence or documentation to support the number of hours expended by the attorney on the appeal.

635.4 The Board each year may approve standard hourly rates for fees for attorneys who practice before the Office.

635.5 An agency may file a written opposition to the employee's motion for attorney fees within fifteen (15) business days of service of the motion or within such time as the Administrative Judge may direct. In its written opposition the agency must state its objection to the employee's request for attorney fees with particularity and clarity.

635.6 A decision by an Administrative Judge on a request for attorney fees shall be considered an addendum to the initial decision.

[Back](#)

636 COMPLIANCE AND ENFORCEMENT

636.1 Unless the Office's final decision is appealed to the District of Columbia Superior Court, the District agency shall comply with the Office's final decision within thirty (30) calendar days from the date the decision becomes final.

636.2 If any District agency fails to comply with the final decision of the Office within the time period specified in Rule 636.1, the employee may file a motion to enforce the final decision. The motion shall be directed to the Administrative Judge who decided the appeal.

636.3 The agency shall have fifteen (15) business days to respond to the employee's motion.

636.4 The employee, with specificity, shall explain in the motion how the agency has failed to comply with the Office's decision. The agency shall include in its answer a statement which admits or denies each allegation in the employee's motion.

636.5 The parties shall serve the motion and answer on each other.

636.6 Failure by the agency to file an answer to the motion for enforcement shall be construed as an admission of the employee's allegations.

636.7 The Administrative Judge shall take all necessary action to determine whether the final decision is being complied with and shall issue a written opinion on the matter.

636.8 If the Administrative Judge determines that the agency has not complied with the final decision, the Administrative Judge shall certify the matter to the General Counsel. The General Counsel shall order the agency to comply with the Office's final decision in accordance with DC Code 1-606.2.

636.9 If the agency fails to comply with the order, the General Counsel may take such actions as are necessary to secure compliance with the order, including forwarding the matter to the Office of the Mayor or other responsible official for direct enforcement.

[Back](#)

[Telephone Directory by Topic](#) • [Agencies](#) • [DC Council](#) • [Search](#) • [Elected Officials](#) • [Feedback](#) • [Translations](#) • [Accessibility](#) • [Privacy & Security](#) • [Terms & Conditions](#)